82-1028

NO.

In the Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT VALADEZ ROMO,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is due process clause contravened when an accused is convicted of transporting a stolen car in interstate commerce in the absence of proof that he knew it was stolen. The Fifth Amendment to the U.S. Constitution provides that no person shall be deprived of his liberty without due process of law.

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PETITION FOR WRIT OF CERTIORARI TO THE
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The Petitioner, ROBERT VALADEZ ROMO, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered September 3, 1982, and its denial of Petition for Rehearing on September 28, 1982.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, affirming the conviction is a per curiam opinion, a copy of the same is attached hereto as Appendix A.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered a judgment affirming the conviction in this cause on September 3, 1982. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1), and Rule 17, U.S. Supreme Court Rules.

STATEMENT OF THE CASE

Petitioner was convicted in U.S. District Court of transporting a stolen motor vehicle in interstate commerce in violation of 18 USC 2312. In support of the jury's verdict for conviction, the Appeals Court erroneously concludes that (1) the title was obviously forged, (2) the vehicle was grossly undervalued and (3) valid proof of purchase was lacking and therefore the accused must be guilty.

REASONS FOR GRANTING THE WRIT

A. Petitioner's principal point of error challenged the sufficiency of the evidence. A certificate of title given the accused was *not* "obviously forged." A title clerk from the State of Minnesota testified that a Texan, unfamiliar with Minnesota titles, would probably not recognize any such forgery. (SF 121 and 129). None of the three professional car dealers, testifying for the government, ever saw any evidence of theft of title problems. (SF 47, 73, and 87). As far as being "grossly undervalued," Mr. Wood saw physical defects in the stolen car that would make it un-

marketable with a franchise dealer (SF 67). Mr. Romo was given a cash receipt and a car title. The purchase was made after two meetings in the Valley with a friendly visitor. Petitioner submits that not only was there a total absence of evidence against him, but the proof presented was contrary to guilt by circumstance by implication or suspicion.

B. The Court of Appeals, as the trial judge and jury, has the mistaken conception that the accused had the burden to show his innocence. The record does not bear out the above conclusions, but even if supported by the evidence, the Government must convict with conclusive proof. The due process clause of the Fifth Amendment cannot permit a jury to convict on mere surmise that an accused is guilty.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this Honorable Court grant his Petition for Writ of Certiorari.

Respectfully submitted,

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BY: _____
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Bar No. 15739000

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned, a member of the bar of this court, certifies that Pursuant to Rule 33, Supreme Court Rules, he served the Petition for Writ of Certiorari to the Court of Appeals for the Fifth Circuit on the counsel for Respondent by enclosing a copy thereof in an envelope, postage prepaid addressed to:

The Honorable Wade H. McCree, Jr.
Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

and depositing same in the United States mails at Edinburg, Texas, on November 27, 1982, and further certifies that all parties required to be served have been served.

L. Aron Pena

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 82-2103
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT VALADEZ ROMO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(September 3, 1982)

Before CLARK, Chief Judge, POLITZ and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

Robert Valadez Romo appeals from his conviction by a jury of transporting a stolen motor vehicle in interstate commerce in violation of 18 U.S.C. § 2312. Finding his assignments of trial court error to be without merit, we affirm.

Viewing the proof in the light most favorable to the jury's verdict, the government established that Romo drove an automobile, which had been stolen in Chicago, Illinois, to Harlingen, Texas, and attempted to sell it through a dealer there. When a potential customer became suspicious of the car's identification, the theft was discovered. Romo contends that he purchased the car for cash from a Chicagoan he met in a bar with no knowledge that it was stolen.

Romo filed a motion *in limine* seeking to prevent the government from impeaching him with a previous conviction for dealing in cocaine because the conviction was pending on appeal at the time of his trial. He contends that the district court abused its discretion in refusing to grant either that motion or a motion for continuance to allow the appeal process to be concluded. Romo emphasizes the prejudice he suffered by pointing out that the appeal resulted in a reversal of his conviction and a requirement of retrial. *United States v. Romo*, 669 F.2d 285 (5th Cir. 1982). The denial of Romo's motion *in limine* was not error. *See* Fed. R. Evid. 609(e). The motion for continuance, which the trial judge denied as untimely, was directed to his sound discretion. We cannot say that this was an abuse of discretion, especially since the motion was not filed until the day before the trial was scheduled and after the jury had been selected. Appellate arguments in the case involving his prior conviction had taken place over a month earlier.

Romo also contends that the court erred in failing to

balance the probative value of the conviction against prejudicial dangers under Fed. R. Evid. 403. However, he does not demonstrate that such a weighing would have resulted in the exclusion of the conviction, nor did he make any objection at trial on this ground. We find no error in the trial court's action.

Romo's next contention is that the trial court erred in denying his motion for a new trial based upon his post-trial discovery that the true owner of the car had told investigating agents that she had given her car keys to a garage man to allow him to repair the car. He asserts that this could have explained the theft of the automobile by another. In support of this motion, Romo also asserted that his drug conviction had indeed been reversed and that newspapers carrying publicity adverse to him had been accessible to the jurors. He emphasizes that he was denied permission to interrogate jurors following the trial. Clearly the fact that the true owner entrusted the car keys to a garage man does not establish theft. The judge's restriction on post-trial conversations with jurors is completely proper. Romo offers no support for his conclusion that the jury was subjected to prejudicial outside influences, and the reversal of his prior conviction does not alter the fact that it was admissible at the time of his trial. We cannot say that the district court abused its discretion in denying the new trial motion.

Romo assigns as error the refusal to transfer his case from the Brownsville Division to either the Laredo or

Corpus Christi Division of the Southern District of Texas. He contends such a transfer was necessary because "possible hint of Appellant's reputation might reach a sitting juror (as it probably did)," "[a]lthough only some prospective jurors had heard of Appellant and a jury was selected, the danger of recollection and outside influence continued," and "Appellant was subject to trial in an area where media hostility might reach a juror's ear." Based only on these unsupported conjectures, this contention is frivolous.

Romo next contends that the evidence presented was insufficient as a matter of law. The government sought to prove that the price Romo paid for the car was so low that he must have known it was stolen. He alleges that the car's imperfections—rust, dents, and a tear in the convertible roof—rebut this argument. Romo also asserts that his theory that he bought the car as an innocent purchaser was credible, that it was not apparent that the false title was a forgery, and that the evidence in general did not establish proof of guilt beyond a reasonable doubt.

All of this exculpatory evidence referred to by Romo did nothing more than raise a jury issue as to his guilt. The title to the vehicle was obviously forged, the vehicle was grossly undervalued at the price Romo asserts he paid, valid proof of purchase was lacking, the car was bought from an unknown in a chance barroom encounter, and the identification plates on the car had obviously been tampered with. In sum, a reasonable juror could have

found that the evidence established guilt beyond a reasonable doubt.

Romo's final assignment of error is that the government's case agent was allowed to testify at the end of the government's case despite the rule requiring witnesses to be excluded from the court room. Fed. R. Evid. 615. The matter of the order of testimony of witnesses and their governance during trial are matters committed to the sound discretion of the district court. We find no abuse of discretion in this case. The record reveals that the primary purpose of the agent's testimony was to place before the jury the admissions made by Romo and to identify physical characteristics of the automobile at the time it came into possession of the FBI. These matters of personal observation and physical testimony support the court's exercise of discretion. This testimony was not the type that could have been tailored to conform to the testimony of other witnesses.

The assigned errors are without merit. The conviction is affirmed.

AFFIRMED.